

FILED '07 FEB 21 13:56 USDJ-ORE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MICHAEL C. GONZALES,

Petitioner,

Civil No. 06-3053-TC

v.

FINDINGS AND
RECOMMENDATION

BERNIE GUISTO,

Respondent.

COFFIN, Magistrate Judge.

By Order (#15) entered February 6, 2007, petitioner was allowed 14 days to show cause in writing why respondent's unopposed Motion to Dismiss (#11) should not be allowed on the grounds that petitioner did not exhaust his administrative remedies and because his claim is moot. Petitioner has not responded to the court's order or requested an extension of

time in which to do so.

Defendant's Motion to Dismiss (#11) should be allowed. This proceeding should be dismissed.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten days from the date of service of a copy of this recommendation within which to file specific written objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issue and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 21 day of February, 2007



Thomas M. Coffin
United States Magistrate Judge